

AD. 7.
August 2, 2021.
MNS.

C. O. No. 3151 of 2018
(**Via video conference**)

Sri Panchanan Patra
Vs.
Sri Tapan Patra and others

Mr. Amit Baran Dash

... for the petitioner.

Mr. Asit Kumar De

...for the opposite party no. 2.

The petitioner has challenged an order, whereby the trial court refused the petitioner's prayer for stay of all further proceedings in a suit, filed by the plaintiffs-opposite party nos. 1 to 7, for declaration of title and consequential reliefs.

The trial Judge has rejected such application for stay on the finding that Section 10 of the Code of Civil Procedure does not apply and, as such, there was no scope of applicability of Section 151 of the Code to exercise the inherent powers of the court.

Learned counsel for the petitioner contends that, in view of the result of the declaratory suit being directly depended on the outcome of the probate application, since the

shares of the parties, if any, would vary in that case, the trial court ought to have granted stay.

Despite service, none appears for any of the opposite parties except opposite party no. 2, who is represented by counsel.

Learned counsel for the opposite party no. 2 submits that none of the criteria, as stipulated in Section 10 of the Code, for grant of stay of the suit, are applicable to the present case. The suit was filed prior to the probate proceeding. The parties as well as the issues of the two pending proceedings are entirely different, since a probate court cannot grant title. As such, it is contended that Section 10 of the Code is not applicable.

By placing reliance on the decision reported at ***AIR 2005 Bombay 388*** (paragraph 9), learned counsel for opposite party no. 2 specifically argues that if express provisions of law are provided for a particular relief (Section 10, CPC in the present case), it excludes the operation of Section 151 of the Code.

Upon hearing learned counsel for both sides and perusing the materials on record, it is apparent that the probate proceeding was filed in connection with a Will, allegedly bequeathing a portion of the subject-matter of the title suit.

Hence, the outcome of such probate application would directly affect the result of the title suit.

Here, although there is no applicability of Section 10 of the Code, as rightly contended by opposite party no. 2 and found by the trial court, the court, *ex debito justitiae*, has the inherent power to grant stay. The case made out by the petitioner in the stay application is not one under Section 10 of the Code at all, but the prayer made therein ought to be granted for the ends of justice, in order to avoid unnecessary conflict of decisions and multiplicity of proceedings.

Accordingly, the title suit ought to have been stayed till disposal of the probate proceeding.

Accordingly, C. O. No. 3151 of 2018 is allowed, thereby setting aside the portion of the order No. 68, dated July 30, 2018, whereby the prayer of the petitioner for stay was refused, by the Civil Judge (Junior Division), First Additional Court at Contai, District- Purba Medinipore, in Title Suit No. 8 of 2016.

All further proceedings of the said suit shall remain stayed till disposal of the probate case, being Other Suit No. 2 of 2013 pending before the Second Court of Additional District and

Sessions Judge at Contai, District- Purba
Medinipore.

There will be no order as to costs.

Urgent photostat certified copies of this
order, if applied for, be made available to the
parties upon compliance with the requisite
formalities.

(Sabyasachi Bhattacharyya, J.)